

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Sammy Garrison and Garrison Construction Company, Inc.,) Docket No.: 9:05-1589-PMD

)

Plaintiff,) **JOINT MOTION TO STAY**

)

vs.)

)

Gregory Alford,)

)

Defendant.)

)

GRANTED


PATRICK MICHAEL DUFFY
United States District Judge

October 10, 2006

Pursuant to Rule 16.00(C) of the Local Civil Rules of the District of South Carolina, Plaintiff Sammy Garrison and Garrison Construction Company, Inc. and Defendant Gregory Alford (collectively the “Parties”) respectfully request a stay of all deadlines in this case while issues in a related matter are considered by the Supreme Court of South Carolina. In support of their motion, the Parties show the Court as follows:

1. This is a legal malpractice action arising out of Defendant Gregory Alford’s (“Alford”) representation of Sammy Garrison Construction Company, Inc. (“Garrison”), in an action seeking foreclosure on its mechanic's lien, etc., against the owners of certain property on which Garrison furnished material or performed labor (“Underlying Action”).
2. Judge Thomas Kemmerlin, Jr., held a trial on June 11 and June 12, 2003, in the Underlying Action. The trial court issued an order on September 15, 2003 finding notice of the mechanic's lien was not properly served and awarding attorney's fees to the defendants. Garrison filed a motion to alter or amend, and the trial court denied the motion.

3. Following the denial of the motion to reconsider, an appeal was filed on behalf of Garrison with the South Carolina Court of appeals.

4. At or near the time of the filing of the appeal in the Underlying Action, this action was commenced against Alford.

5. On or around April 14, 2006, the South Carolina Court of Appeals, in Unpublished Opinion No. 2006-UP-203, reversed and remanded the action, finding that service of the mechanic's lien was proper. The subsequent Petition for Rehearing was denied by order of the South Carolina Court of Appeals dated July 5, 2006.

6. The Parties to this action believe that the effect of the Court of Appeals decision essentially may moot the issues raised in this action before the Court. However, there is now a Petition for Writ of Certiorari of the Underlying Action before the South Carolina Supreme Court.

7. Rather than incurring unnecessary costs and expenses in pursing this matter while the Underlying Action has been on appeal, the Parties to this action have, by agreement, concentrated jointly on the underlying appeal.

8. Additionally, rather than dismissing this action (because of the Petition for Certiorari pending before the South Carolina Supreme Court) the Parties to this action jointly request that all deadlines set forth in the Court's scheduling order be stayed.

9. It is believed that if the South Carolina Supreme Court denies the Petition for Certiorari, then it may not be necessary for the Parties to pursue this action and will so notify this Court in order to have the action dismissed.

10. This Joint Motion to Stay is without prejudice to either Party to this action. In the event that it is necessary to continue with this litigation, no matter how the South Carolina

Supreme Court, then the Parties will so notify this Court, in order for the Court to issue a new Scheduling Order governing discovery, motions and trial.

WHEREFORE, the Parties respectfully request that the Court grant their Joint Motion to Stay, pending the ruling of the South Carolina Supreme Court in the Underlying Action.

BARNES, ALFORD, STORK & JOHNSON, LLP

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October 6, 2006